

ASSEMBLY BILL

No. 2359

Introduced by Assembly Member La Suer

February 21, 2002

An act to amend Sections 45125, 45125.01, and 45125.1 of the Education Code, relating to school employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 2359, as introduced, La Suer. School employees: Social Security numbers.

Existing law requires the governing board of a school district to require each person to be employed in a position not requiring certification qualifications to have fingerprint cards prepared by a local public law enforcement agency, requires that agency to transmit the cards to the Department of Justice, and requires the Department of Justice to ascertain whether the applicant or employee has been arrested or convicted of any crime and to furnish all information of which it has a record and which pertains to the person whose fingerprints were transmitted. Existing law also requires the employees of any entity that has a contract with a school district to provide specified services to submit or have submitted their fingerprints to the Department of Justice if the employees are to have more than limited contact with pupils.

This bill would require the collection of Social Security numbers from persons employed or to be employed in certificated service or classified service, would require the Social Security numbers to be submitted to the Department of Justice when the fingerprint cards are submitted, or, in the case of those persons who have previously submitted fingerprint cards to be separately submitted, and would

prescribe related matters, thereby imposing a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 45125 of the Education Code is
2 amended to read:
3 45125. (a) (1) Except as provided in Section 45125.01, the
4 governing board of any school district shall require each person
5 *employed, or to be employed in a position not requiring*
6 *certification qualifications, except a secondary school pupil*
7 *employed in a temporary or part-time position by the governing*
8 *board of the school district having jurisdiction over the school*
9 *attended by the pupil, to have two fingerprint cards bearing the*
10 *legible rolled and flat impressions of the person's fingerprints*
11 *together with a personal description of the applicant, including the*
12 *applicant's or employee's Social Security number, prepared by a*
13 *local public law enforcement agency having jurisdiction in the*
14 *area of the school district, which agency shall transmit the cards,*
15 *together with the fee required by subdivision (f), to the Department*
16 *of Justice; except that any district, or districts with a common*
17 *board, may process the fingerprint cards if the district so elects. On*
18 *and after the effective date of the act amending this section, each*
19 *person subject to the requirements of this section who has*
20 *previously submitted fingerprint cards shall separately submit his*
21 *or her Social Security number to the school district for submission*



1 *to the Department of Justice and the school district shall submit*
2 *these Social Security numbers to the Department of Justice.*

3 (2) As used in this section, “local public law enforcement
4 agency” includes any school district and as used in Section 45126
5 requires the Department of Justice to provide to any school district,
6 upon application, information pertaining only to applicants for
7 employment by the district, including applicants who are
8 employees of another district.

9 (b) (1) Upon receiving the fingerprint cards *or Social Security*
10 *number*, the Department of Justice shall ascertain whether the
11 applicant *or employee* has been arrested or convicted of any crime
12 insofar as that fact can be ascertained from information available
13 to the department and forward the information to the employing
14 agency submitting the applicant’s *or employee’s* fingerprints *or*
15 *Social Security number* no more than 15 working days after
16 receiving the fingerprint cards *or Social Security number*. The
17 Department of Justice shall not forward records of criminal
18 proceedings that did not result in a conviction but shall forward
19 information on arrests pending adjudication.

20 (2) Upon implementation of an electronic fingerprinting
21 system with terminals located statewide and managed by the
22 Department of Justice, the Department of Justice shall ascertain
23 the information required pursuant to this subdivision within three
24 working days. If the Department of Justice cannot ascertain the
25 information required pursuant to this subdivision within three
26 working days, the department shall notify the school district that
27 it cannot so ascertain the required information. This notification
28 shall be delivered by telephone or electronic mail to the school
29 district. If a school district is notified by the Department of Justice
30 that it cannot ascertain the required information about ~~a person~~ *an*
31 *applicant for employment*, the school district may not employ that
32 person until the Department of Justice ascertains that information.

33 (3) In the case of a person *employed, or to be employed* in a
34 position not requiring certification qualifications who is described
35 in subparagraph (A) or (B), the school district shall request the
36 Department of Justice to forward one copy of the fingerprint cards
37 *and the person’s social security number* to the Federal Bureau of
38 Investigation for the purpose of obtaining any record of previous
39 convictions of the applicant.

1 (A) The person has not resided in the State of California for at
2 least one year immediately preceding the person's application for
3 employment.

4 (B) The person has resided for more than one year, but less than
5 seven years, in the State of California and the Department of
6 Justice has ascertained that the person was convicted of a sex
7 offense where the victim was a minor or a drug offense where an
8 element of the offense is either the distribution to, or the use of a
9 controlled substance by, a minor.

10 (4) *A school district may periodically request the information*
11 *described in subdivision (b) during an employee's course of*
12 *employment.*

13 (c) The governing board of a school district shall not employ
14 a person until the Department of Justice completes its check of the
15 state criminal history file as set forth in this section and Sections
16 45125.5 and 45126, except that this subdivision does not apply to
17 secondary school pupils who are to be employed in a temporary or
18 part-time position by the governing board of the school district
19 having jurisdiction over the school they attend.

20 (d) The governing board of each district shall maintain a list
21 indicating the number of current employees, except secondary
22 school pupils employed in a temporary or part-time position by the
23 governing board of the school district having jurisdiction over the
24 school they attend, who have not completed the requirements of
25 this section. The Department of Justice shall process these cards
26 within 30 working days of their receipt and any cards in its
27 possession on the date of the amendment of this section by
28 Assembly Bill 1610 of the 1997–98 Regular Session within 30
29 working days of that date. ~~School districts that have previously~~
30 ~~submitted identification cards for current employees to either the~~
31 ~~Department of Justice or the Federal Bureau of Investigation shall~~
32 ~~not be required to further implement the provisions of this section~~
33 ~~as it applies to those employees.~~

34 (e) A plea or verdict of guilty or a finding of guilt by a court in
35 a trial without a jury or forfeiture of bail is deemed to be a
36 conviction within the meaning of this section, irrespective of a
37 subsequent order under the provisions of Section 1203.4 of the
38 Penal Code allowing the withdrawal of the plea of guilty and
39 entering of a plea of not guilty, or setting aside the verdict of guilty,
40 or dismissing the accusations or information.

(f) (1) The school district shall provide the means whereby the fingerprint cards may be completed *and Social Security numbers collected* and may charge a fee determined by the Department of Justice to be sufficient to reimburse the department for the costs incurred in processing the application. The amount of the fee shall be forwarded to the Department of Justice with the required copies of applicant's fingerprint cards. *The Department of Justice shall charge a reduced fee when receiving and processing only Social Security numbers for those persons who have previously submitted fingerprint cards.* The governing board may collect a reasonable fee payable to the local public law enforcement agency taking the fingerprints and completing the data on the fingerprint cards. In no event shall the fee exceed the actual costs incurred by the agency.

(2) The additional fees shall be transmitted to the city or county treasury. If an applicant is subsequently hired by the board within 30 days of the application, the fee may be reimbursed to the applicant. Funds not reimbursed to applicants shall be credited to the general fund of the district. If the fingerprint cards forwarded to the Department of Justice are those of a person already in the employ of the governing board, the district shall pay the fee required by this section, which fee shall be a proper charge against the general fund of the district, and no fee shall be charged the employee.

(g) This section applies to substitute and temporary employees regardless of length of employment.

(h) Subdivision (c) of this section shall not apply to a person to be employed if a school district determines that an emergency or an exceptional situation exists, and that a delay in filling the position in which the person would be employed would endanger pupil health or safety.

(i) Where reasonable access to the statewide, electronic fingerprinting network is available, the Department of Justice may mandate electronic submission of the fingerprints and related information required by this section.

(j) A school district shall request subsequent arrest service from the Department of Justice as provided under Section 11105.2 of the Penal Code.

(k) All information obtained from the Department of Justice is confidential. Each agency handling Department of Justice information shall ensure the following:

1 (1) No recipient may disclose its contents or provide copies of
2 information.

3 (2) Information received shall be stored in a locked file
4 separate from other files, and shall only be accessible to the
5 custodian of records.

6 (3) Information received shall be destroyed upon the hiring
7 determination in accordance with subdivision (a) of Section 708
8 of Title 11 of the California Code of Regulations.

9 (4) Compliance with destruction, storage, dissemination,
10 auditing, backgrounding, and training requirements as set forth in
11 Sections 700 through 708, inclusive, of Title 11 of the California
12 Code of Regulations and Section 11077 of the Penal Code
13 governing the use and security of criminal offender record
14 information is the responsibility of the entity receiving the
15 information from the Department of Justice.

16 (I) Notwithstanding any other provision of law, the Department
17 of Justice shall process pursuant to this section all requests from
18 a school district, an employer, or a human resource agency for
19 criminal history information on a volunteer to be used in a school.

20 SEC. 2. Section 45125.01 of the Education Code is amended
21 to read:

22 45125.01. (a) For situations in which a person is an applicant
23 for employment, or is employed on a part-time or substitute basis,
24 in a position not requiring certification qualifications in multiple
25 school districts within a county or within contiguous counties, the
26 districts may agree among themselves to designate a single district,
27 or a county superintendent may agree to act on behalf of
28 participating districts within the county or contiguous counties, for
29 the purposes of performing the following duties:

30 (1) Sending fingerprints *and Social Security numbers* to the
31 Department of Justice.

32 (2) Receiving reports of convictions of serious and violent
33 felonies, criminal history records and reports of subsequent arrests
34 from the Department of Justice.

35 (3) Maintaining common lists of persons eligible for
36 employment.

37 (b) The school district or county superintendent serving in the
38 capacity authorized in subdivision (a) shall be considered the
39 employer for purposes of subdivisions (a) and (f) of Section
40 45125.

1 (c) Upon receipt from the Department of Justice of a report of
2 conviction of a serious or violent felony, the designated school
3 district or county superintendent shall communicate that fact to the
4 participating districts and remove the affected employee from the
5 common list of persons eligible for employment.

6 (d) Upon receipt from the Department of Justice of a criminal
7 history record or report of subsequent arrest for any person on a
8 common list of persons eligible for employment, the designated
9 school district or county superintendent shall give notice to the
10 superintendent of any participating district or a person designated
11 in writing by that superintendent, that the report is available for
12 inspection on a confidential basis by the superintendent or
13 authorized designee, at the office of the designated school district
14 or county superintendent, for a period of 30 days following receipt
15 of notice to enable the employing school district to determine
16 whether the employee meets that district's criteria for continued
17 employment. The designated school district or county
18 superintendent shall not release a copy of that information to any
19 participating district or any other person, shall retain or dispose of
20 the information in the manner required by law after all
21 participating districts have had an opportunity to inspect it in
22 accordance with this section, and shall maintain a record of all
23 persons to whom the information has been shown that shall be
24 available to the Department of Justice to monitor compliance with
25 the requirements of confidentiality contained in this section.

26 (e) Any agency processing Department of Justice responses
27 pursuant to this section shall submit an interagency agreement to
28 the Department of Justice to establish authorization to submit and
29 receive information pursuant to this section.

30 (f) All information obtained from the Department of Justice is
31 confidential. Every agency handling Department of Justice
32 information shall ensure the following:

33 (1) No recipient may disclose its contents or provide copies of
34 information.

35 (2) Information received shall be stored in a locked file
36 separate from other files, and shall only be accessible to the
37 custodian of records.

38 (3) Information received shall be destroyed upon the hiring
39 determination in accordance with subdivision (a) of Section 708
40 of Title 11 of the California Code of Regulations.

(4) Compliance with destruction, storage, dissemination, auditing, backgrounding, and training requirements as set forth in Sections 700 through 708, inclusive, of Title 11 of the California Code of Regulations and Section 11077 of the Penal Code governing the use and security of criminal offender record information is the responsibility of the entity receiving the information from the Department of Justice.

SEC. 3. Section 45125.1 of the Education Code is amended to read:

45125.1. (a) Except as provided in subdivisions (b) and (c), if the employees of any entity that has a contract with a school district, as defined in Section 41302.5, to provide any of the following services may have any contact with pupils, those employees shall submit or have submitted their fingerprints in a manner authorized by the Department of Justice together with *their Social Security numbers and* a fee determined by the Department of Justice to be sufficient to reimburse the department for its costs incurred in processing the application:

- (1) School and classroom janitorial.
- (2) Schoolsite administrative.
- (3) Schoolsite grounds and landscape maintenance.
- (4) Pupil transportation.
- (5) Schoolsite food-related.

(b) This section shall not apply to an entity providing any of the services listed in subdivision (a) to a school district in an emergency or exceptional situation, such as when pupil health or safety is endangered or when repairs are needed to make school facilities safe and habitable.

(c) This section shall not apply to an entity providing any of the services listed in subdivision (a) to a school district when the school district determines that the employees of the entity will have limited contact with pupils. In determining whether a contract employee has limited contact with pupils, the school district shall consider the totality of the circumstances, including factors such as the length of time the contractors will be on school grounds, whether pupils will be in proximity with the site where the contractors will be working, and whether the contractors will be working by themselves or with others. If a school district has made this determination, the school district shall take appropriate



1 steps to protect the safety of any pupils that may come in contact
2 with these employees.

3 (d) A school district may determine, on a case-by-case basis, to
4 require an entity providing schoolsite services other than those
5 listed in subdivision (a) or those described in Section 45125.2 and
6 the entity's employees to comply with the requirements of this
7 section, unless the school district determines that the employees of
8 the entity will have limited contact with pupils. In determining
9 whether a contract employee will have limited contact with pupils,
10 the school district shall consider the totality of the circumstances,
11 including factors such as the length of time the contractors will be
12 on school grounds, whether pupils will be in proximity with the
13 site where the contractors will be working, and whether the
14 contractors will be working by themselves or with others. If a
15 school district makes this determination, the school district shall
16 take appropriate steps to protect the safety of any pupils that may
17 come in contact with these employees. If a school district requires
18 an entity providing services other than those listed in subdivision
19 (a) and its employees to comply with the requirements of this
20 section, the Department of Justice shall comply with subdivision.

21 (e) (1) The Department of Justice shall ascertain whether the
22 individual whose fingerprints *and Social Security number* were
23 submitted to it pursuant to subdivision (a) has been arrested or
24 convicted of any crime insofar as that fact can be ascertained from
25 information available to the department. Upon implementation of
26 an electronic fingerprinting system with terminals located
27 statewide and managed by the Department of Justice, the
28 department shall ascertain the information required pursuant to
29 this section within three working days. When the Department of
30 Justice ascertains that an individual whose fingerprints were
31 submitted to it pursuant to subdivision (a) has a pending criminal
32 proceeding for a felony as defined in Section 45122.1 or has been
33 convicted of a felony as defined in Section 45122.1, the
34 department shall notify the employer designated by the individual
35 of that fact. The notification shall be delivered by telephone or
36 electronic mail to the employer.

37 (2) The Department of Justice, at its discretion, may notify the
38 school district in instances when the employee is defined as having
39 a pending criminal proceeding described in Section 45122.1 or has
40 been convicted of a felony as defined in Section 45122.1.

1 (3) The Department of Justice may forward one copy of the
2 fingerprints *and the person's Social Security number* to the
3 Federal Bureau of Investigation to verify any record of previous
4 arrests or convictions of the applicant. The Department of Justice
5 shall review the criminal record summary it obtains from the
6 Federal Bureau of Investigation and shall notify the employer only
7 as to whether or not an applicant has any convictions or arrests
8 pending adjudication for offenses which, if committed in
9 California, would have been punishable as a violent or serious
10 felony. The Department of Justice shall not provide any specific
11 offense information received from the Federal Bureau of
12 Investigation. The Department of Justice shall provide written
13 notification to the contract employer only concerning whether an
14 applicant for employment has any conviction or arrest pending
15 final adjudication for any of those crimes, as specified in Section
16 45122.1, but shall not provide any information identifying any
17 offense for which an existing employee was convicted or has an
18 arrest pending final adjudication.

19 (f) An entity having a contract as specified in subdivision (a)
20 and an entity required to comply with this section pursuant to
21 subdivision (d) shall not permit an employee to come in contact
22 with pupils until the Department of Justice has ascertained that the
23 employee has not been convicted of a felony as defined in Section
24 45122.1.

25 (1) This prohibition does not apply to an employee solely on the
26 basis that the employee has been convicted of a felony if the
27 employee has obtained a certificate of rehabilitation and pardon
28 pursuant to Chapter 3.5 (commencing with Section 4852.01) of
29 Title 6 of Part 3 of the Penal Code.

30 (2) This prohibition does not apply to an employee solely on the
31 basis that the employee has been convicted of a serious felony that
32 is not also a violent felony if that employee can prove to the
33 sentencing court of the offense in question, by clear and
34 convincing evidence, that he or she has been rehabilitated for the
35 purposes of schoolsite employment for at least one year. If the
36 offense in question occurred outside this state, then the person may
37 seek a finding of rehabilitation from the court in the school district
38 in which he or she is resident.

39 (g) An entity having a contract as specified in subdivision (a)
40 and an entity required to comply with this section pursuant to



1 subdivision (d) shall certify in writing to the school district that
2 neither the employer nor any of its employees who are required by
3 this section to submit or have their fingerprints *and social security*
4 *numbers* submitted to the Department of Justice and who may
5 come in contact with pupils have been convicted of a felony as
6 defined in Section 45122.1.

7 (h) An entity having a contract as specified in subdivision (a)
8 on the effective date of this section and an entity required to
9 comply with this section pursuant to subdivision (d) by a school
10 district with which it has a contract on the effective date of the
11 amendments made to this section during the 1997–98 Regular
12 Session shall complete the requirements of this section within 90
13 days of that date.

14 (i) For purposes of this section, a charter school shall be
15 deemed to be a school district.

16 (j) Where reasonable access to the statewide electronic
17 fingerprinting network is available, the Department of Justice may
18 mandate electronic submission of the fingerprint cards and other
19 information required by this section.

20 SEC. 4. Notwithstanding Section 17610 of the Government
21 Code, if the Commission on State Mandates determines that this
22 act contains costs mandated by the state, reimbursement to local
23 agencies and school districts for those costs shall be made pursuant
24 to Part 7 (commencing with Section 17500) of Division 4 of Title
25 2 of the Government Code. If the statewide cost of the claim for
26 reimbursement does not exceed one million dollars (\$1,000,000),
27 reimbursement shall be made from the State Mandates Claims
28 Fund.

